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Responsibility to protect: timely and decisive response

Report of the Secretary-General

I. Genesis of the responsibility to protect

1. Since the 2005 World Summit's adoption of the concept of the responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity (also referred to as "RtoP"), the international community has made significant progress in the development of the concept and in its implementation. In 2009, in its resolution 63/308, the General Assembly agreed to give ongoing consideration to the concept. As the participation by Member States in the annual informal debates in the Assembly that have accompanied my three previous reports has shown, great importance continues to be attached to the responsibility to protect.

2. My first report, issued in 2009, on implementing the responsibility to protect (A/63/677), sets out the three pillars of the concept. These pillars are drawn from paragraphs 138 and 139 of the World Summit Outcome (see General Assembly resolution 60/1), in which the Heads of State and Government unanimously agreed that "each individual State has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity". They also affirmed the role of the international community in assisting States to protect their populations from these crimes, including by "assisting those which are under stress, before crises and conflicts break out". Thirdly, Member States agreed to "take collective action, in a timely and decisive manner, through the Security Council, in accordance with the Charter of the United Nations, including Chapter VII, on a case-by-case basis and in cooperation with relevant regional organizations as appropriate, should peaceful means be inadequate and national authorities are manifestly failing to protect their populations from genocide, war crimes, ethnic

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cleansing and crimes against humanity." The three pillars are not sequential and are of equal importance; without all three, the concept would be incomplete. All three pillars must be implemented in a manner fully consistent with the purposes, principles, and provisions of the Charter. My second report, in 2010, focused on early warning, assessment and the responsibility to protect (A/64/864), while my third report, in 2011, focused on the role of regional and subregional arrangements in implementing the responsibility to protect (A/65/877-S/2011/393).

3. Recent events have once again brought to the fore both the importance and the challenges of timely and decisive responses to the four specified crimes and violations. Although preventing these crimes and violations is far preferable to responding after they have been committed, there are times when prevention fails and a timely and decisive response is required. It must also be recognized that concerns have been raised by Member States about responsibility, the measures that might be used when a timely and decisive response is required, and about the management and oversight of those measures. Taking into consideration the urgency of these issues, the present report offers an assessment of the wide range of tools available under Chapters VI, VII and VIII of the Charter for implementing pillar three of the responsibility to protect.

4. The need for a collective response to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity was founded on the brutal legacy of the twentieth century, marred as it was by the Holocaust, the killing fields of Cambodia, the genocide in Rwanda, the mass killings in Srebrenica and other events. These and other tragic events, which underlined the profound failure of individual States to live up to their responsibilities and obligations under international law, as well as the collective inadequacies of international institutions, led my predecessor, Secretary-General Kofi Annan, to take a series of steps that resulted in the development of the concept of the responsibility to protect.[1] These steps included the Secretary-General's High-level panel on Threats, Challenges and Change, which was convened in 2004 (see A/59/565 and Corr.1), the creation of the Office of the Special Adviser on the Prevention of Genocide, also in 2004, and the Secretary-General's 2005 report entitled "In larger freedom: towards development, security and human rights for all" (A/59/2005). These steps culminated in the historic commitment to the responsibility to protect by all Heads of State and Government at the 2005 World Summit.

5. Shortly after assuming office as Secretary-General, I appointed a Special Adviser on the Prevention of Genocide, and a Special Adviser whom I asked to focus on the responsibility to protect. I asked the two advisers to form a Joint Office as their responsibilities, though distinct, were complementary.

6. Crimes and violations relating to RtoP often stem from identity-related conflicts, whether the conflicts are between the groups specified in the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, which are "national, ethnical, racial or religious" groups, or those defined by other factors. Such conflicts emanate not from mere differences between the groups, whether real or perceived, but from implications of those differences, which may cause populations to be subjected to indignities reflected in gross inequalities, namely,

[1] The International Commission on Intervention and State Sovereignty (2001) was the first to refer to a concept of the responsibility to protect.

discrimination, marginalization, exclusion, stigmatization, dehumanization and denial of fundamental human rights. Reactions and counter-reactions to those inequalities can lead to violence that targets the civilian population, often driven by existential fears on both sides. In such conditions, the most effective form of prevention lies in constructive management of diversity to promote good governance, equality, inclusivity, respect for human rights and fundamental freedoms and observance of democratic values and practices. This is primarily the responsibility of the State, with the support of the international community, as needed.

7. The 2005 declaration on the responsibility to protect is focused on prevention. States declared that their responsibility "entails the prevention of such crimes, including their incitement, through appropriate and necessary means" (see General Assembly resolution 60/1, para. 138). However, prevention and response must be seen as closely connected. Early prevention should address structural factors that affect a State's capacity both to prevent and to respond to the four specified crimes and violations. The Office of my two Special Advisers has developed an "analysis framework" that identifies factors that can be used to assess the risk of these crimes and violations. Further work could be done to develop and sharpen response tools to address each risk factor.

8. The present report emphasizes various dimensions of pillar three, but it is also a stocktaking restatement of the concept and its vital importance to the protection of populations from genocide, war crimes, ethnic cleansing and crimes against humanity. The report considers the relationship among the three pillars, suggesting that one should not draw too sharp a distinction between prevention and response. It considers the Charter-based tools that have been employed and the partnerships that have been utilized to date, as well as ways of protecting responsibly. Finally, the report looks at progress made so far in implementing the responsibility to protect and the challenges that still lie ahead.

II. The implementation strategy

9. The responsibility to protect is a concept based on fundamental principles of international law as set out, in particular, in international humanitarian, refugee and human rights law. A wide range of tools, techniques, and partners have been involved in its implementation in individual situations, including the pacific settlement of disputes under Chapter VI, action with respect to threats to the peace, breaches of the peace and acts of aggression under Chapter VII, and actions by regional and subregional arrangements under Chapter VIII. From the outset, the importance of a narrow but deep approach has been highlighted — narrow, in terms of restricting its application to the crimes and violations cited in paragraph 138 of the 2005 World Summit Outcome and to their incitement, and deep, in terms of the variety of Charter-based tools that are available for this purpose.

10. In seeking better ways to anticipate, prevent, and respond to genocide, war crimes, ethnic cleansing and crimes against humanity, the Heads of State and Government at the 2005 World Summit gave broad expression to the responsibility to protect so as to provide a wide range of options, within the bounds of the Charter, for addressing the distinct characteristics of each situation. Consistent with this approach has been the repeated call for an early and flexible response tailored to the

particular circumstances of each case. The international community's experience in pursuing the goals of RtoP in specific situations over the past four years has confirmed the logic of this approach, as every situation has been distinct in important respects.

11. Some may consider that prevention and response are at opposite ends of the spectrum. In practice, however, the two often merge. Preventive diplomacy, for instance, is generally a response to a specific pattern of events or set of concerns, while international responses to the early stages of atrocities seek to prevent their escalation, as well as to accelerate their termination. It may be argued that the first two pillars of the implementation strategy address prevention, and the third, response. The dividing lines are, however, not so clear in practice. Under pillar one, the exercise of State responsibility may entail elements of response, such as suppressing incendiary rhetoric targeting a minority group, or disrupting arms shipments that may be used to commit genocide, war crimes, ethnic cleansing and crimes against humanity. The State has a responsibility to do all possible to prevent the commission of these crimes and violations on its territory, or under its jurisdiction, and to stop them when they occur.

12. Similarly, pillar two — the commitment to help States build capacity to protect their populations and to assist those which are under stress, before crises and conflicts break out — can also comprise elements of prevention and response, sometimes even at the same time. International assistance under pillar two in the form of an international commission of inquiry to establish the facts and to identify the perpetrators of crimes and violations relating to RtoP can also be a pillar three action insofar as it constitutes a timely and decisive response. At the same time, the dispatch of an international commission of inquiry, through its mere presence in the State concerned, can contribute to the prevention of further crimes and violations and thus serve as a preventive measure under pillar two. In this regard, the commission of inquiry established to investigate the 28 September 2009 massacre in Guinea would be an example. Hence, it may not always be possible to clearly determine whether an activity falls exclusively under one or another of the three pillars and such a determination is not necessary.

13. In the General Assembly's consideration of the responsibility to protect, some States have raised questions about the nature of the relationship among the three pillars and whether they are sequenced. Pillars are not sequenced. The question should therefore never be under what circumstances the responsibility to protect "applies". This wrongly implies that there are situations where States do not have a responsibility to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity. It is clear that every State has an inherent responsibility to protect. The question we confront is one of how best to achieve the goals of RtoP in different circumstances.

14. Pillar three is best understood in the context of the other two. It would make little sense standing alone. As has been underscored from the outset, the goal is to help States to succeed in meeting their protection responsibilities. It is not the role of the United Nations to replace the State in meeting those responsibilities. The purpose of action under pillar three is to help lay the foundation for the State to reassure its responsibility and for assisting or persuading national authorities to meet their responsibilities to their populations under the well-established legal obligations expressed under pillar one.

15. Effective action under pillars one and two may make action under pillar three unnecessary. Pillar three action should also contribute to the future achievement of pillar one goals. Putting an end to the four specified crimes and violations in a particular situation should be the beginning of a period of social renewal and institutional capacity-building aimed at making future violence less likely. As discussed in my report on implementing the responsibility to protect (A/63/677), the United Nations and its range of agencies, funds and programmes have valuable experience in assisting societies in recovering from these crimes and violations and in building the institutions, legislation, practices and attitudes to lessen the likelihood of their reoccurrence. In this way, an informed and calibrated response can serve prevention goals as well.

16. United Nations peacekeeping missions are based on the principle of consent and generally deploy in support of and with the overall consent of the host State. As such, they fall under pillar two and are to be distinguished from pillar three tools. Peacekeeping missions have a broad range of mechanisms which are aimed at supporting peaceful political transitions and building host nation capacity to protect civilians. Where mandated under Chapter VII to protect civilians, peacekeeping missions may use force as a measure of last resort in situations where civilians are under imminent threat of physical harm. The Security Council does not distinguish as to the source of that threat, and thus peacekeeping missions may be called upon to respond wherever civilians are threatened. While the work of peacekeepers may contribute to the achievement of RtoP goals, the two concepts of the responsibility to protect and the protection of civilians have separate and distinct prerequisites and objectives.

17. In some cases, the will of national authorities to avoid crimes and violations relating to RtoP may be reinforced by the demonstrated readiness of the international community to take collective action, in a timely and decisive manner, when peaceful means are inadequate and national authorities are manifestly failing to meet their responsibilities. As such, credible and proportionate action under pillar three, in accordance with the Charter, may help to encourage States to assume their responsibilities under pillar one. Assistance under pillar two is designed both to help the State meet its pillar one responsibilities and to render action under pillar three unnecessary or less likely. There have been numerous cases in which national governments have sought and benefited from international assistance in addressing serious strains within their societies that had led, or might have led, to the commission of the crimes and violations addressed in paragraph 138 of the World Summit Outcome.

18. Over time, the expectation is that recourse to an international response under pillar three will be required less and less often as States, in some cases with assistance from the international community, will offer their populations protection from genocide, war crimes, ethnic cleansing and crimes against humanity as a matter of standard practice. Responsibility is an ally of sovereignty, in that collective action by the international community to protect populations is not called for where a State fully discharges its sovereign responsibility to protect.

19. My three previous reports have each emphasized the benefits of early engagement with the society and the Government under stress, before crises and conflicts break out. My report on early warning, assessment and the responsibility to protect underscored the importance of early engagement for developing a full,

balanced and dynamic understanding of a given situation, something that is equally critical to framing strategies for prevention or for response. Early action, the report cautioned, should also be well-informed action. "Getting the right assessment — both of the situation on the ground and of the policy options available to the United Nations and to its regional and subregional partners — is essential for the effective, credible and sustainable implementation of the responsibility to protect and for fulfilling the commitments made by the Heads of State and Government at the 2005 World Summit" (see A/64/864, para. 19). In other words, an effective response strategy under pillar three may depend on the extent to which the international community has engaged in a sustained manner with the society and the Government under pillar two. At the same time, this very engagement may reduce the frequency with which pillar three is called upon.

20. In terms of the overall strategy, five lessons stand out from experience to date, as follows:

- *One*. Each situation is distinct. The principles of the responsibility to protect should be applied as consistently and uniformly as possible. However, the choices of methods and tools employed in each situation should be shaped by the circumstances on the ground and by informed judgment of the likely consequences. As each situation is different, it would be counterproductive to try to make the application of these principles appear identical in all situations.

- *Two*. Such distinctions may lead to charges of double standards and selectivity. Perceptions matter. It is therefore essential that I apply these principles consistently in my statements and actions, as should my Special Advisers, the High Commissioner for Human Rights, and other ranking United Nations officials. The toughest and most consequential decisions are of course made by the Security Council. Though its decisions, or lack thereof, will sometimes be controversial, the overall trend has been towards greater Council engagement in responding to situations of human rights violations. This tendency has been manifested in explicit references to the responsibility to protect in a number of its recent resolutions.

- *Three*. As noted above, experience has shown the need for a more integrated and nuanced understanding of how the three pillars relate to and reinforce each other. Often, observers voice a preference for some pillars over the others. However, none of the pillars is likely to be effective standing alone. Every situation to date has illustrated that core premise.

- *Four*. An effective and integrated strategy is likely to involve elements of both prevention and response. Every situation addressed over the past four years has required a mix of preventive and response measures, with the balance between the two varying with the circumstances of each case. Neither offers promising results without the other.

- *Five*. We have learned, again and again, the critical role of partners in advancing the work of the United Nations in this field, as in so many other fields. This lesson has not come as a surprise, as it was stressed in my first report and was the subject of the third, on the role of regional and subregional arrangements in implementing the responsibility to protect (A/65/877-S/2011/393). Experience has proven the simple fact that prevention and response are most effective when the United Nations works in tandem with its

regional partners. Strengthening that relationship in order to maximize the opportunities it presents remains a critically important component of the implementation strategy.

III. Tools available for implementation

21. The importance of using all of the tools available under Chapters VI, VII and VIII of the Charter to help protect populations from the four specified crimes and violations is underlined in the World Summit Outcome as well as in the implementation strategy outlined in my report on implementing the responsibility to protect. In paragraph 139 of the Summit Outcome, Heads of State and Government expressed a preference for addressing situations first with the appropriate diplomatic, humanitarian and other peaceful means, in accordance with Chapters VI and VIII of the Charter. Experience over the last four years has shown that the more coercive the tool, the less often it has been used to protect populations. Chapter VI instruments have been used in many situations and Chapter VIII efforts by regional and/or subregional arrangements in most of them.

22. Chapter VI of the Charter provides for a range of non-coercive responses, including negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means. These measures continue to be developed and refined as we continue to learn what works best. Many of these activities can be undertaken by the Secretary-General in his "good offices" role or by regional and subregional arrangements, without the explicit authorization of the Security Council or the General Assembly.

23. Much attention has been given to the importance of mediation and preventive diplomacy in preventing and responding to crises. The African Union mediation in Kenya in 2008 and the role of the United Nations Regional Centre for Preventive Diplomacy for Central Asia in addressing inter-communal violence in Kyrgyzstan in 2010 are often referred to as examples of applying Chapter VI tools for the prevention of crimes and violations relating to RtoP. Mediation and preventive diplomacy have also come in the form of the appointment of eminent persons or special envoys to initiate dialogue and prepare for local, regional or United Nations mediation or facilitation efforts, as was the case in relation to Libya. This was also the case when the Special Envoy for the Lord's Resistance Army (LRA)-affected areas was appointed to facilitate the Southern Sudanese mediation between the LRA and the Government of Uganda. The dedicated work of the Joint Special Envoy of the United Nations and the League of Arab States on Syria highlights the centrality of partnerships between the United Nations and regional organizations and underlines the importance of Member States' support for diplomatic initiatives carried forward in their name.

24. Experience has shown that mediation and preventive diplomacy are most effective when different organizations work together, speak with one voice, and use their relative strengths in a complementary fashion. These arrangements have been used to facilitate dialogue with the parties, with the aim of stopping the violence and preventing recurrence, promoting human rights, combating impunity, supporting national reconciliation and economic reconstruction, as well as engaging the parties on specific protection issues, such as humanitarian access and security.

25. Public advocacy is an important tool to focus attention on situations of concern. In the past 18 months, I have called on States to comply with their responsibility to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity, as have the High Commissioner for Human Rights and my two Special Advisers. Such statements have addressed situations of concern in Côte d'Ivoire, Libya, Yemen, South Sudan, Sudan and Syria. The intergovernmental bodies of the United Nations have on several occasions in the last 18 months referred to the concept in their resolutions. The Security Council has referred to States' responsibility to protect their populations in its resolutions on Libya and Yemen.[2] The General Assembly has referred to States' responsibility to protect their populations in resolutions on Syria,[3] while the Human Rights Council has referred to States' responsibility to protect their populations in their resolutions on Libya and Syria.[4]

26. Crimes and violations related to RtoP are often preceded by incitement to violence. In paragraph 139 of the World Summit Outcome, States affirm their responsibility to prevent incitement of the four specified crimes and violations. I recall that any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence is prohibited under the International Covenant on Civil and Political Rights. Measures to counter inflammatory rhetoric or hate propaganda have included public condemnation by the political organs of the United Nations and calls by senior officials for cessation of such rhetoric, such as the call made by the first Special Adviser on the Prevention of Genocide in 2004 with respect to Côte d'Ivoire. The media has also been utilized to counter extremism with messages of tolerance.

27. Fact-finding missions and commissions of inquiry have increasingly been used, depending on their particular terms of reference, to establish impartially whether gross violations of human rights law and/or serious violations of international humanitarian law have occurred, to report on a State's ability to deal with the violations, to highlight the root causes of the violations, to suggest ways of moving forward through ensuring accountability and/or to produce a historical record of events that have occurred. Such investigations have been established by the Security Council, by the Human Rights Council and by me. The Human Rights Council may also appoint a Special Rapporteur or an Independent Expert to advise on a situation or refer it to existing special procedures. United Nations human rights treaty bodies may determine that a State party is in violation of its human rights treaty obligations and, depending on their procedures, engage with the State concerned. Parallel instruments and procedures exist in a number of regions and subregions.

28. Monitoring and observer missions deployed under Chapter VI of the Charter provide another important vehicle for reporting and verifying information. Such missions can be led by a variety of different organizations. They provide real-time reporting of the situation on the ground, can assist the parties to conduct

[2] See Security Council resolutions 1970 (2011), 1973 (2011), 2040 (2012), on the situation in Libya, and resolution 2014 (2011), on the situation in Yemen.

[3] See General Assembly resolutions 66/176 and 66/253 on the situation in the Syrian Arab Republic.

[4] See Human Rights Council resolutions S-15/1, on the situation in Libya, and S-16/1, S-18/1 and S-19/1, on the situation in Syria.

investigations into specific incidents, assess and verify the parties' compliance with agreements and their international human rights obligations and protection responsibilities, monitor specific sources of threat, such as the illicit flow of weapons, facilitate confidence-building, offer good offices and deter atrocities through their presence.

29. The International Criminal Court (ICC) works to put an end to impunity for the perpetrators of the most serious crimes and thus to contribute to the prevention of such crimes. The threat of referrals to ICC can undoubtedly serve a preventive purpose and the engagement of ICC in response to the alleged perpetration of crimes can contribute to the overall response. More generally, the emergence of a system of international criminal justice has had a positive influence on the development of the concept of RtoP.

30. The Security Council has used its powers to initiate universal, public reporting on crimes and violations against children in armed conflict (see Security Council resolution 1612 (2005)) and on sexual violence in conflict (see Security Council resolution 1960 (2010)). The forced recruitment of children under the age of 15 is considered a war crime while conflict-related sexual violence may, depending on the context in which it is committed, amount to genocide, a crime against humanity or a war crime.

31. When a State does not respond to diplomatic and other peaceful means, paragraph 139 of the Summit Outcome calls for "timely and decisive" collective action, in accordance with the Charter. Such collective measures may be authorized by the Security Council, under Articles 41 and 42 of the Charter. Coercive measures under Article 41 include sanctions, which comprise freezing of financial assets of both the Government and individual members of a regime and imposition of travel bans; suspending credits, aid and loans from international financial institutions to Government officials located abroad; restricting the provision of other financial services to a Government or individual officials; controlling the availability of luxury goods, weapons and related materials, and high-value commodities; limiting diplomatic contact of States with a target entity; applying embargoes on participation in international sporting events; and imposing restrictions on scientific and technical cooperation. Sanctions can be structured carefully so as to primarily affect those responsible and minimize the impact on the civilian population. Sanctions can be subject to stringent conditions. They can be imposed for no longer than necessary, be proportional and be subject to appropriate human rights safeguards. In the last decade, changes in the design, implementation and monitoring of sanctions have made their application both more humane and more successful. Sanctions work best when they are one of a number of tools used as part of a coherent strategy. Their aims need to be clear, consistent and well articulated so that they are understood by the persons or bodies they target and do not close the door to engagement.

32. Only the Security Council can authorize the use of force, under Chapter VII, Article 42, of the Charter. Coercive military force can be utilized in various forms, through the deployment of United Nations-sanctioned multinational forces for establishing security zones, the imposition of no-fly zones, the establishment of a military presence on land and at sea for protection or deterrence purposes, or any other means, as determined by the Security Council.

33. Chapter IV of the Charter authorizes the General Assembly to consider the "principles of co-operation in the maintenance of international peace and security" brought before it by a Member State, the Security Council or a State that is not a Member of the United Nations and to make recommendations regarding such principles to Member States and/or to the Security Council. The General Assembly and the Secretary-General may also bring "situations which are likely to endanger international peace and security" to the attention of the Security Council. The adoption by the General Assembly of resolution 66/253 on the situation in Syria provides an example of the role that the principal deliberative organ of the United Nations can play. This resolution strongly condemned "widespread and systematic" human rights violations in Syria and demanded that the Syrian Government put an end to all violence and protect its population.

34. The Human Rights Council is charged with "promoting universal respect for the protection of all human rights and fundamental freedoms for all". In response to human rights emergencies that might give rise to genocide, war crimes, ethnic cleansing and crimes against humanity, the Council can hold special sessions; adopt resolutions with follow-up measures; set up independent commissions of inquiry or fact-finding missions to investigate allegations of human rights violations; mandate the Office of the High Commissioner for Human Rights to provide necessary assistance or engage in human rights dialogue with concerned parties; and call for access for humanitarian workers and human rights monitors. These initiatives can play a vital role in any comprehensive response to the four specified crimes and violations. In addition, the Council's Universal Periodic Review procedure obliges all Member States to undergo a peer review of their adherence to their human rights obligations.

35. Timely and decisive response requires careful assessment of the realistic potential of specific tools in specific circumstances. Identifying the right measures to take at the right time also requires taking into account authorization requirements and lead actors. Regional arrangements under Chapter VIII of the Charter have a critical role to play, including in relation to measures authorized by the Security Council.

36. More work is needed on the impact of incentives and disincentives in responsibility to protect situations. This should include further research on what drives resistance to non-coercive measures, and on ways to overcome such resistance. More needs to be known about what combinations of measures are most effective in which circumstances, which capacities need to be augmented and the best ways of coordinating different approaches by different arms of the international community.

37. There is room for Member States to think and act more strategically. Measures, especially those under Chapters VI and VIII of the Charter, should be applied as early as possible. While military enforcement must remain part of the toolbox, our primary aim should be to respond early and effectively in non-coercive ways and thereby reduce the need for force. It has become clear that the success of coercive and non-coercive measures requires political unity in the design and consistency and operational coordination in the application. Strengthening modes of collaboration between the national, the regional and the international levels in this regard continues to be necessary.

IV. Partners available for implementation

38. The diversity of partners puts a premium on ensuring that the concept of the responsibility to protect is understood as fully and applied as faithfully and as uniformly as possible by all actors, including those responsible for protecting populations within the territory they control and those who would respond on behalf of the larger international community when the former manifestly fail to meet their protection responsibilities. The integrity and credibility of the concept depends upon its full, faithful and consistent application. This presumably is among the reasons that the Heads of State and Government at the 2005 World Summit called on the General Assembly to continue its consideration of the principle as it is implemented over time. Since implementation of the responsibility to protect is still at an early stage, periodic assessments of progress towards full and consistent implementation can play a constructive role in ensuring that all partners have a clear and common understanding of how to move forward. There is an imperative to move forward.

39. The responsibilities of the principal organs of the United Nations in implementing the responsibility to protect have already been discussed. Although other United Nations organs and bodies are not strictly "partners", as they are part of the United Nations system, it is important to recall that they also hold mandates relevant to protection. In addition to the role of the Human Rights Council, the 10 treaty bodies established pursuant to United Nations human rights instruments, which include the Human Rights Committee, the Committee Against Torture and the Committee on the Elimination of Racial Discrimination, are contributing to the documentation of human rights violations of State parties to those instruments and also detecting factors which may increase the risk of genocide, war crimes, ethnic cleansing and crimes against humanity. The Office of the United Nations High Commissioner for Human Rights plays a key protection role through its field presences, as do the United Nations Children's Fund, in relation to the protection of children, and the Office of the United Nations High Commissioner for Refugees, in relation to the protection of refugees, returnees and stateless persons.

40. Individual States cannot afford to be indifferent to the commission of the four specified crimes and violations. In its 2007 judgment on the Application of the Convention on the Prevention and Punishment of the Crime of Genocide (*Bosnia and Herzegovina v. Serbia and Montenegro*), the International Court of Justice found that Serbia had violated its obligation under the Genocide Convention to prevent the Srebrenica genocide. In making its determination, the Court took into account the capacity of the State to influence effectively the actions of the persons likely to commit, or already committing genocide, which it noted depended on, among other things, the strength of the political and other links between the authorities of that State and the main actors in the events.

41. States may be highly influential in persuading others to protect populations at risk and may take diplomatic measures, including the imposition of sanctions, when other States fail to protect their populations. They can also request that regional arrangements of which they are members, or the Security Council directly, take measures to protect populations. Under Chapter VI of the Charter, any Member of the United Nations may bring any dispute or situation, which would encompass the commission of crimes and violations relating to RtoP, to the attention of the Security Council. In the case of Libya, it was at the initiative of some of its members that the League of Arab States requested the Security Council to take measures to protect the

population. In addition, States contribute to the prevention of these crimes and violations by ensuring the granting of asylum and refraining from refoulement of persons fleeing violence, with the assistance of the Office of the United Nations High Commissioner for Refugees, when appropriate.

42. As my 2011 report on the role of regional and subregional arrangements stressed, Chapter VIII of the Charter underlines the value of utilizing arrangements among international, regional and subregional organizations for prevention and protection purposes. Article 52 of the Charter confirms their importance for dealing with such matters relating to the maintenance of international peace and security as are appropriate for regional action. Article 53 of the Charter requires that no enforcement action be taken under regional arrangements without the authorization of the Security Council. In the recent past, a number of regional, subregional and other organizations, including the European Union, the African Union, the Organization for Security and Cooperation in Europe, the League of Arab States, the North Atlantic Treaty Organization (NATO) and the Economic Community of West African States (ECOWAS), have taken measures in accordance with the Charter to protect populations at risk of genocide, war crimes, ethnic cleansing and crimes against humanity.

43. For instance, ECOWAS, through its Monitoring Group (ECOMOG), undertook military operations to protect populations in Sierra Leone in 1997, Guinea-Bissau in 1998 and Côte d'Ivoire in 2002. ECOWAS is currently taking the lead in mobilizing multilateral efforts to prevent a deterioration in the situation and to protect populations in northern Mali. Article 4h of the Constitutive Act of the African Union sets out the right of the Union to intervene for the purpose of protecting civilians from genocide, war crimes and crimes against humanity.

44. As paragraph 139 of the World Summit Outcome highlighted, "humanitarian" action plays a critical role in protecting populations from genocide, war crimes, ethnic cleansing and crimes against humanity. Humanitarian agencies can help to protect populations and shield them from some of the worst effects of displacement. As such, humanitarian action is a critically important part of any "timely and decisive" response. However, humanitarian action must never be used as a substitute for political action. It must also be understood that humanitarian action depends upon humanitarian space. To defend humanitarian space, the United Nations and the international community must respect the humanitarian principles of neutrality, independence, humanity and impartiality.

45. Civil society can also be an important protection partner. National and international civil society organizations have a range of tools at their disposal to prevent or respond to crimes and violations relating to RtoP. The public commitment of States to the responsibility to protect provides civil society organizations with a strong basis to hold national governments and the international community to account when they are manifestly failing to protect populations. Civil society organizations are well poised to advocate and galvanize support for the implementation of the responsibility to protect.

46. National civil society organizations may play an important role by providing grass-roots early warning. New technologies allow individuals to provide live information that can help individuals to remove themselves from harm's way. This was the case, for example, in Libya and Kenya. Such information was also used to prompt States and international organizations to act. In other instances, local

communities have organized themselves, sometimes with the assistance of international civil society organizations, to use non-violent strategies to prevent violence or to protect themselves from violence in cases where States and the international community are unwilling or unable to protect them. National and international private companies and businesses can also play a crucial role, not least by rejecting trade with States that fail to protect their populations. These avenues of protection warrant encouragement and facilitation.

47. Individuals are also important actors. Each individual has some degree of influence and hence a share of responsibility. Individuals play an important role in holding States and their leaders to account when they fail to protect. This includes a responsibility to speak out against intolerance, discrimination and incitement, as well as a responsibility not to participate in the commission of crimes and violations relating to RtoP.

48. Recent experience has demonstrated that the international community's response to the four specified crimes and violations is most effective when actions are tailored to individual circumstances and calibrated appropriately. More work is required to increase understanding of the roles that regional and subregional arrangements can play and to build stronger relationships between the United Nations and the regions to facilitate shared understanding and common approaches. Further dialogue across the global, regional and subregional levels would help forge common understanding, as would dialogue across regions. In all situations, we must not lose sight of our common goal — the protection of populations from genocide, war crimes, ethnic cleansing and crimes against humanity — and we must focus on finding a common viable strategy for achieving it. If this can be done, then coherence and complementarity in implementation are likely to follow.

V. "Responsibility while protecting"

49. As the last two sections demonstrate, in recent years the responsibility to protect has been invoked in more situations than ever before. Not surprisingly, there have been some challenges with its implementation. With expanded use has come a deeper and wider conversation about how to "operationalize" the responsibility to protect in a manner that is responsible, sustainable and effective.

50. In that context, the initiative on "responsibility while protecting" that was introduced by the President of Brazil during the general debate in September 2011 is welcome. The Government of Brazil has since facilitated broad and constructive discussion of the initiative among Member States. The initiative has received considerable attention from Member States, as the international community has sought to refine and apply the concept first elaborated at the 2005 World Summit against the context of recent action authorized by the Security Council, particularly in Libya. My two Special Advisers have participated in several of those discussion sessions. The dialogue has served to underscore the commitment of Member States to the prevention and protection principles embodied in the responsibility to protect, as well as their shared determination to ensure that implementation of the concept will be carried out in a way that is consistent with the purposes, principles and provisions of the Charter and with the intent of the Heads of State and Government expressed at the 2005 World Summit.

51. At every stage of the implementation process, from identification and assessment to policy formulation and action, international actors need to act responsibly. Faulty or ill-informed analysis at an early stage could set international decision makers on the wrong path, leading to overreaction or under-reaction. As I cautioned in my first report, a pattern of false alarms or, worse, selective reporting could also damage the credibility of the Organization. It is therefore important that early warning and assessment be conducted fairly, prudently and professionally, without political interference or double standards. The Secretariat has endeavoured to meet those expectations; further efforts and coordination are required.

52. "Responsibility while protecting" calls for vigilance and sober judgement in identifying where threats of magnitude exist and are growing. Evidence of incitement, dehumanizing rhetoric and the mobilization of portions of the population against others is of particular concern, as these may be indications of intent to commit atrocities. It is the responsibility of Governments, and the international community at the global, regional, and subregional levels to monitor developments carefully in such situations, to assist States under stress, as called for in paragraph 139 of the World Summit Outcome, and to proactively engage with such States to help resolve the tensions and conflicts that could result in the commission or incitement of the four specified crimes and violations. "Responsibility while protecting" requires early identification, engagement, and preventive action, as described in my 2010 report (A/64/864). Waiting for situations to deteriorate and for the pattern of atrocities to escalate before acting is irresponsible and counterproductive. Not only does this place innocent lives in needless danger, but history teaches us that the longer we wait, the more dramatic and costly to all concerned the eventual intervention will be.

53. The essence of "responsibility while protecting" is doing the right thing, in the right place, at the right time and for the right reasons. Timely and decisive action puts a premium on assessment, on understanding what is happening, why it is happening, and how the international community can help keep a difficult situation from becoming worse. An early and flexible response strategy requires dynamic assessments, focusing on trends and developments, not just the latest headlines. That is why the Heads of State and Government expressed support for United Nations early warning capabilities in paragraph 138 of the World Summit Outcome, and that is why the High Commissioner for Human Rights and my two Special Advisers have been increasingly active in issuing statements and advisories in such situations.

54. Although the international community has acted under Chapters VI, VII and VIII of the Charter, it is understandable that the greatest attention has been paid to Security Council action under Chapter VII. In the case of Libya, the Security Council decided to authorize the use of force after most of its members had come to the conclusion that a series of peaceful measures had proven inadequate. Some Member States, however, have contended that non-coercive measures were not given sufficient time to demonstrate results in Libya. Others have expressed the view that those charged with implementing Council resolution 1973 (2011) exceeded the mandate that they were given by the Council. Whatever the specific merits of these arguments, it is important that the international community learn from these experiences and that concerns expressed by Member States are taken into account in the future. The Charter gives the Security Council a wide degree of latitude to determine the most appropriate course of action. The Council should

continue to respond flexibly to the demands of protecting populations from crimes and violations relating to RtoP.

55. Regarding the use of force by NATO in Libya, the International Commission of Inquiry on Libya mandated by the Human Rights Council found that NATO had "conducted a highly precise campaign with a demonstrable determination to avoid civilian casualties" (see A/HRC/19/68). NATO has given a detailed account of its targeting decisions and, in particular, its focus on minimizing civilian casualties. Notwithstanding these efforts, civilian lives were lost during the air campaign. The Libyan experience serves to remind us of the importance of military actors taking all possible precautions to avoid situations that place civilians at risk, in accordance with international law governing the conduct of armed hostilities, and investigating possible violations of international law committed in such contexts. The experience also reaffirms the importance of early action aimed at protecting populations so as to prevent the need for the use of force.

56. In the light of the risks involved, coercive measures — whether sanctions or military force — have never been the favoured tools for implementing the responsibility to protect. Instead, preference for the prevention of the four specified crimes and violations, which invariably requires non-forcible measures, has been emphasized. That said, coercive measures should neither be left out of our comprehensive strategy nor set aside for use only after all other measures have been tried and found to be inadequate. Article 42 of the Charter permits the contemplation of enforcement measures by the Security Council in situations where it considers that peaceful measures provided for in Article 41 would be inadequate or have proved to be inadequate. I continue to favour an early and flexible response that takes into consideration all the tools available under Chapters VI, VII and VIII and is tailored to the circumstances of each situation.

57. Decisions to use force or apply other coercive measures are never to be taken lightly. Such decisions require careful assessment of the situation, a review of the likely consequences of action and inaction and an assessment of the most effective and appropriate strategy for achieving our collective goal. Assessment must be timely and should facilitate, and never inhibit, effective responses. There is no template for decision-making in such situations, nor is one desirable as each situation is different. Instead, the international community should learn from its experience to date and strive to improve on implementation, using all available tools.

58. The application of pillar three of the implementation strategy will sometimes entail difficult choices. Disagreements about the past must not stand in the way of our determination to protect populations in the present. Nor should Heads of State and Government lose sight of the commitment made to act in accordance with the responsibility to protect. The initiative on "responsibility while protecting" provides a useful pathway for continuing dialogue about ways of bridging different perspectives and forging strategies for timely and decisive responses to crimes and violations relating to RtoP. Suggestions for improving decision-making in such circumstances and reviewing implementation are useful catalysts for further discussion.

VI. Conclusion

59. The responsibility to protect provides a political framework based on fundamental principles of international law for preventing and responding to genocide, war crimes, ethnic cleansing and crimes against humanity. It is clear that the concept has been widely accepted. The major political organs of the United Nations have invoked the concept, including the Security Council and the General Assembly. This is not to deny that controversy still persists on aspects of implementation, in particular with respect to the use of coercive measures to protect populations. As the present report highlights, our experience has shown that a range of non-coercive measures are brought into play under pillar three. We need to better understand the measures available under Chapters VI and VIII of the Charter, sharpen those tools where necessary, and make better and smarter use of them. This will require a commitment to employ the tools at our disposal at an earlier stage. Prevention and decisive and effective early action save lives and reduce the need for subsequent, more coercive action to protect populations. Inaction is not an option.

60. Enforcement action under Chapter VII of the Charter is to be contemplated when other measures are judged unlikely to succeed or when they have already failed. The use of force should be a measure of last resort. After the tragedies of Rwanda and Srebrenica, none can argue that Chapter VII measures can never be an appropriate response. However, careful consideration should be given to the use of such measures. This is precisely why in paragraph 139 of the 2005 World Summit Outcome, Heads of State and Government expressly countenanced Chapter VII measures in situations where the State has manifestly failed to protect its populations and where peaceful means are inadequate. One of the challenges, then, is to recognize the necessity of Chapter VII measures in some situations, to learn from past experience, and to build bridges between different views about how to realize the shared goal of protecting populations.

61. The experience of applying the responsibility to protect in specific situations over the last four years has confirmed the basic validity of the strategy laid out in my first report. However, there is clearly a need for continuing dialogue on such matters in the General Assembly. It is expected that the upcoming informal interactive dialogue in the General Assembly on the theme of the present report will be a prime opportunity not only to address our experience under pillar three, but also to consider its mutually supportive relationship to pillars one and two. There is no template for responding to these grave crimes and violations that can be applied to all cases. The cooperation of, and among, Member States is essential to successful implementation. Working together in pursuit of our shared commitment to protect populations, we must be prepared to use the tools placed at our disposal by the Charter of the United Nations, to learn lessons from past experiences and consider how to do better. Progress towards more effective and consistent implementation of the responsibility to protect must continue. I remain convinced that this is a concept whose time has come.